

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Terrell Rhodes Montgomery,	)	
	)	
Plaintiff,	)	C/A No. 2:11-0630-TMC
	)	
v.	)	<b>ORDER</b>
	)	
	)	
City of Charleston Police Department;	)	
and Officer Seay,	)	
	)	
Defendants.	)	
_____	)	

Terrell Rhodes Montgomery (“Plaintiff”), a *pro se* prisoner, filed a civil action against the Defendants alleging claims for false imprisonment and false arrest, or malicious prosecution. (See Complaint at 2). The Defendants have filed a motion to dismiss the Defendant City of Charleston Police Department pursuant to Rules 8(a) and 12, Fed.R.Civ.P. (Dkt. # 16). The Magistrate Judge’s Report and Recommendation (Dkt. # 21) filed on June 8, 2011, recommends that only the Defendant City of Charleston Police Department be dismissed and otherwise the Motion to Dismiss should be denied. The Report and Recommendation sets forth in detail the relevant facts and legal standards on this matter, and the court incorporates the Magistrate Judge’s Report herein without a recitation.

The Magistrate Judge’s Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific

objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Plaintiff was advised of his right to file objections to the Report and Recommendation (Dkt. # 15 at 6). However, Plaintiff filed no objections to the Report and Recommendation.

In the absence of objections to the Magistrate Judge's Report and Recommendation, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report and Recommendation results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation (Dkt. # 21) and incorporates it herein. It is therefore **ORDERED** that the Motion to Dismiss (Dkt. #16) is **GRANTED in part** and **DENIED in part** and only the Defendant City of Charleston Police Department is **DISMISSED** as a Defendant in this action.

**IT IS SO ORDERED.**

s/Timothy M. Cain  
United States District Judge

Greenville, South Carolina  
October 19, 2011

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.